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EXAMINER

GARCIA, ERNESTO

ART UNIT PAPER NUMBER

3679

DATE MAILED: 07/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/853,240

Applicant(s)

VINCENT ET AL.

Examiner

Ernesto Garcia

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,6,7,9,12-16,18,19 and 34-39 is/are pending in the application.
- 4a) Of the above claim(s) 34-39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,6,7,9,12-16,18 and 19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 October 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

Newly submitted claims 34-39 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Applicant elected to prosecute a method for electronic commerce over a computer network and a system for performing the method. The new claims are directed towards Figure 5 which is a method for coordinating product orders and distribution over a network despite three networks are shown in Fig. 5.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 34-39 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the computer network

in the elected Figure 2 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

The drawings are objected to because the system used to perform the method of claim 1 has not been shown. The system in Figure 5 contains three networks while claim 1 requires one network. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

Claim 1, 12, 15, 18 and 19 are objected to because of the following informalities:  
regarding claim 1, a semicolon is needed after "network" in line 23, and the phrase "and a customer price from a contractual relationship between said customer and said manufacturer" in lines 25-36 is an incomplete statement; shouldn't it state "a customer price derived from a contractual relationship between the customer and the manufacturer;

regarding claim 12, this claim depends from cancelled claim 11. For purposes of examination, the examiner has considered this claim dependent from claim 1; and,

regarding claim 15, "said group" in line 4 should be --a group--;

regarding claim 18, it is unclear how the limitation, "dealer distributes said product to the customer" in lines 2-3, further limits the system structurally; and,

regarding claim 19, it is unclear how the limitation "said network is a world wide web" in line 3, further limits the system structurally. Appropriate correction is required.

### ***Specification***

The disclosure is objected to because of the following informalities: applicant is reminded that the description of the arrows 10, 12, 11, 14, 5, 2a, 8, 2b, 9a, 3, 9b, 13 are not what they describe in Figure 2. For instance, the dealer availability report 4, as described on paragraph 64, is not an actual report in Figure 2, but rather a flow of information between the dealer and the manufacturer. The same applies to the manufacturers confirmation report 5, the product order report 6, the purchase order 7, etc. Furthermore, "customer, 10" in paragraph 34 should be --customer, C<sup>1</sup>--; "dealer, 9b" in paragraph 34 should be --dealer, D<sup>1</sup>--, and "manufacturer, 13" in paragraph 34 should be --manufacturer, M<sup>1</sup>--. Appropriate correction is required.

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1, 2, 6, 7, 9, 13-16, 18 and 19 are rejected under 35 U.S.C. 101 because the claimed invention lacks patentable utility. After devising the claimed invention and simplifying the language in the claim (see attachment), the examiner has found out that when the customer transfers purchase funds corresponding to the customer price, the customer is paying only the customer price as determined by the contract (see transferring purchase funds clause). For instance, if a customer has a contract to buy vehicles for \$1000 each from a manufacturer, the customer is going to transmit \$1000 for one vehicle purchased and no more according to the clause. There is nothing in the claim that indicates the customer price includes any other fee. The examiner does not see any usefulness or benefits from the availability index as the customer price is not adjusted by the availability index or the customer pays the availability index. There is nothing novel in directing the availability index to the exchange or the dealer or used for any particular purpose. If the customer transfers the customer price, \$1000, to the dealer, shouldn't the dealer send the \$1,000 back to the manufacturer as required by the contract between the customer and the manufacturer.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 2, 6, 7, 9 and 12 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make the invention.

Regarding claim 1, it is unclear how one of ordinary skill in the art will derive the availability index from the dealer price adjustment (the availability report) and the costumer price. Is there a formulate that one can derive the availability index? The specification does not teach the derivation. Are the dealer price adjustment (availability report) and the costumer price manipulated together to make the availability index? How does one arrive to such derivation? The drawings do not show the availability index or the derivation.

Regarding claims 2, 6, 7, 9 and 12, these claims do not comply with the enablement requirement as these claims depend from claim 1.

Claims 1, 2, 6, 7, 9 and 12 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Regarding claim 1, the detailed description of the elected Figure 2, paragraph 33 line 18, states that the availability index (AI) is derived from the dealer availability index (DAI) comprising a dealer price adjustment; thus, the AI is derived from the dealer price adjustment and not both the availability report and a customer price as claimed in lines 24-25 of claim 1. Furthermore, applicant has stated that the product is transported to the customer through the computer network in the claim. The examiner cannot find support on the specification to indicate the product is transported through the computer network. According to the specification, paragraph 50, the product is shipped to the customer.

Regarding claims 2, 6, 7, 9 and 12, the claims do not comply with the written description requirement as these claims depend from claim 1.



Claims 1, 2, 6, 7, 9 and 12 are rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure which is not enabling. The customer price from the dealer price adjustment (DPA) is critical or essential to the practice of the invention, but not included in the claim(s) is not enabled by the disclosure. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976). Applicant has stated, in paragraph 33, lines 14-15, that the customer price is based on both the dealer price adjustment and the contracted price between the customer and the manufacturer. Thus, it is essential that the customer price be from the dealer price adjustment and the contracted price.

Claims 13-16, 18 and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 13, applicant has stated that the intended use of the processor is for determining a customer price from the contractual price relationship, [and] the dealer price adjustment and an availability index; however, this statement contradicts the method as the customer price is from the contractual relationship only. Thus, the determination of the customer price is unclear. Furthermore, the availability index in the method contradicts that of the system. Claim 1 states that the availability index is derived from the availability report (the dealer price adjustment) and a customer price; however, claim 13 states that the availability index is derived from the dealer availability and a manufacturers inventory. Thus, it is unclear what features derive the availability

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index. The examiner is confused and wonders whether claim 13 is the system for the practice of the method in claim 1.

Regarding claims 14-16, 18 and 19, the claims depend from claim 13 and therefore are indefinite.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 6, 7, 9, 13-16, 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sharp et al., 6,263,317.

Regarding claim 1, Sharp et al. disclose a method for e-commerce over a network, the method includes:

transmit an order entry data set **306** from a customer to an exchange **110** through the computer network; the order data set comprises a product identifier **1540** and a product volume **565**;

determine a manufacturer **130** from the product identifier **1540**;

transmit a manufacturer specific order from the exchange **110** to the manufacturer **130** through the computer network (col. 3, lines 32-36); the manufacturer specific order comprises the product identifier **1540** and the product volume **565**;

transmit a product availability request from the manufacturer **130** to a dealer **140** through the computer network (col. 4, lines 12-13); the product availability request comprises the product identifier **1540** and the product volume **565**;

transmit an availability report from the dealer **140** to the manufacturer **130** through the computer network (col. 4, lines 24-26); the availability report comprises a dealer price adjustment (either a commission, the shipping cost, or both);

transmit a manufacturers confirmation report from the manufacturer **130** to the exchange **110** through the computer network; the manufacturers confirmation report comprises an availability index (the quantity available) and a customer price from a contractual relationship between the customer and the manufacturer (the cost of the product; applicant is reminded that when the customer places an order, the customer has set a contract to pay the price for an item as set forth by the manufacturer); the availability index is derived from the availability report (the dealer price adjustment --the commission, the shipping cost, or both) and the customer price is derived from the dealer price adjustment (the cost of the product, and the commission, the shipping cost, or both);

transmit a product order confirmation from the exchange **110** to the customer **120** (a confirmation is often sent to the customer after internet transactions). The product

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order confirmation comprises the manufacturers confirmation report (the quantity available and the cost of the product);

transport a product **730** corresponding to the product identifier **1540** from the dealer **140** to the customer **120** (the dealer ships the product to the customer);

transfer purchase funds from the customer **120** to the dealer **140** (this is normal procedure; either a dealer charges the customer or the exchange charges the customer); the purchase funds corresponds to the customer price; and,

transfer manufacturer funds from the dealer **140** to the manufacturer **130** (although not specifically stated in Sharp et al., it is well known in business for a dealer to pay the manufacturer for products purchased from the manufacturer that were credited to the dealer). However, the product is not transported to the customer through the computer network; or that the manufacturer funds are transferred through the computer network by the dealer. Applicant is reminded that transporting software through online is old technology and paying funds through the internet is very common for a customer to pay the manufacturer. The customer can be a dealer, a retailer, or a third party.

Regarding claim 2, the manufacturer specific order further comprises a customer identifier **555**.

Regarding claim 6, the computer network is a world wide web.

Regarding claim 7, the method further comprises:

transmit a purchase order from the customer **120** to the exchange **110** before transport of the product **730**

Regarding claim 9, the method further comprises:

transmit a purchase confirmation from the exchange **110** to the manufacturer **130** (this step is normal procedure when the customer places a purchase order).

Regarding claims 13-16 and 18-19, given the method performed by Sharp et al., the system is made. Therefore, regarding claim 1, Sharp et al. teach a system comprising: a first communication device, a second communication device; a third communication device, a processor; a fourth communication device; and a fifth communication device. Applicant is reminded that 110, 120, 130, 140, 130 have a communication device, thus four communication devices. The manufacturer computer 130 has the processor.

The first communication device is able to receive a manufacturing specific order over the network from an exchange where the manufacturing specific order comprises a product identifier, which identifies a product of the manufacturer, a product volume and a customer identifier which identifies the customer.

the second communication device is able to transmit a product availability request to a dealer wherein the product availability request comprises the product identifier and the product volume;

the third communication device is able to receive an availability report from the dealer wherein the availability report comprises a dealer availability index for the product and a dealer price adjustment;

the processor is able to determine a customer price from the contractual price relationship and the dealer price adjustment and an availability index derived from the dealer availability index and a manufacturers inventory;

the fourth communication device is able to transmit a manufacturer confirmation report to the exchange wherein the manufacturer confirmation report comprises the customer price and the availability index; and,

the fifth communication device is able to receive a purchase confirmation from the exchange wherein the purchase confirmation comprises products distributed by the dealer.

Regarding claim 14, Sharp et al., although not specified, teach a sixth communication device. Applicant is reminded that each server is known to have two or more ports of T1 or T3 lines of communication devices.

Regarding claim 15, the first communication device and the third communication device are the same device (the same T1 communication device).

Regarding claim 16, the first communication device, the second communication device, the third communication device, the fourth communication device, the fifth communication device, and the sixth communication device could all be a T1 communication device.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ernesto Garcia whose telephone number is 703-308-8606. The examiner can normally be reached from 9:30-6:00. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-872-9327 for After Final communications.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on 703-308-2686. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

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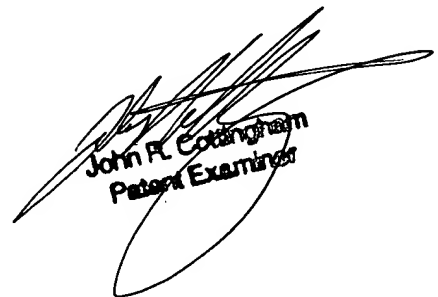
Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

E.G.

June 15, 2004

Attachment: one copy of condensed claim 1 as understood by the examiner.



John R. Cottingham  
Patent Examiner



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Claim 1. A method for e-commerce over a computer network, the method comprises:  
transmit a product identifier and a product volume from a customer to an

exchange through the computer network;

determine a manufacturer from the product identifier;

transmit the product identifier and the product volume from the exchange to the  
manufacturer through the computer network;

transmit the product identifier and the product volume from the manufacturer to a  
dealer through the computer network;

transmit a dealer price adjustment from the dealer to the manufacturer through  
the computer network;

transmit an availability index from the manufacturer to the exchange through the  
computer network; the availability index is derived from the dealer price adjustment and  
a customer price from a contractual relationship between the customer and the  
manufacturer;

transmit the availability index and the customer price from the exchange to the  
customer through the computer network;

transport a product corresponding to the product identifier from the dealer to the  
customer through the computer network;

transfer purchase funds from the customer to the dealer through the computer  
network; the purchase funds corresponds to the customer price; and,

transfer manufacturer funds from the dealer to the manufacturer through the  
computer network.

### **Legend**

product identifier and product volume = order entry data set = manufacturer specific  
order = product availability request;

availability report = dealer price adjustment;

manufacturers confirmation report = availability index and customer price;

product order confirmation = manufacturers confirmation report = availability index and  
customer price;

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